

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VERSEL GREEN,

Plaintiff,

v.

DECISION AND ORDER
07-CV-60S

NATIONAL GRID, NATIONAL GRID USA
SERVICE COMPANY, INC., NIAGARA MOHAWK
POWER CORPORATION, NIAGARA MOHAWK,
A NATIONAL GRID COMPANY, LOCAL 97,
COLOGNE SERVICES CORPORATION, and
HAMBERGER & WEISS

Defendants.

1. Plaintiff commenced this action by filing a three-page Complaint on September 15, 2006, in New York State Supreme Court, Erie County. He alleged that his former employers, Niagara Mohawk and National Grid, took various actions against him and ultimately terminated his employment in violation of federal and state laws, and that his union, Local 97, breached its duty of fair representation.¹

2. This action was removed to this Court on February 1, 2007. (Docket No. 1). One day after filing his Complaint in state court, Plaintiff filed a virtually identical complaint in this Court under Civil Case Number 06-CV-0629. These cases are now consolidated under Civil Case Number 07-CV-0060. (Docket No. 11).

3. Following removal, Local 97 moved to Dismiss the Complaint. (Docket No.

¹The full name of the entity sued as Local 97 is "International Brotherhood of Electrical Workers, AFL-CIO, Local Union 97." See Docket No. 23.

6). In a Decision and Order filed April 10, 2008, this Court found that the Complaint failed to meet the minimal pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure with respect to Local 97, and denied Local 97's motion without prejudice. (Docket No. 10). This Court directed Plaintiff to file an Amended Complaint setting forth his claims against Local 97 in greater detail within 30 days from the date of the Order. (Docket No. 10).

4. Plaintiff failed to meet both the 30-day deadline and a further deadline for amendment. (Docket No. 13).

5. On July 29, 2008, Defendant Local 97 again moved to dismiss. (Docket No. 14). This Court issued a Scheduling Order, directing Plaintiff to respond to Defendant's Motion by August 29, 2008. Id. Plaintiff did not meet that deadline and has filed no response to date.

6. On October 20, 2008, Defendants Niagara Mohawk, National Grid, National Grid USA, and Niagara Mohawk Power Corporation filed a Motion for Judgment on the Pleadings, or alternatively, to Dismiss for failure to prosecute. (Docket No. 17).

7. On November 25, 2008, this Court issued a sua sponte Order, directing Plaintiff to file an Amended Complaint setting forth its claims against Local 97 in compliance with Rule 8(a) within fifteen (15) days. (Docket No. 21). This Court also advised Plaintiff that this was his third and final warning; there would be no further extensions of time. Id.

8. On December 15, 2008, Plaintiff filed an Amended Complaint, which has increased in length from 3 to 19 pages and, among other things, named two new defendants. (Docket No. 22).

9. On December 23, 2008, Local 97 filed a Motion to Dismiss Plaintiff's Amended Complaint. (Docket No. 23). On December 4, 2008, Defendants Niagara Mohawk, National Grid, National Grid USA, and Niagara Mohawk Power Corporation (the "Employer Defendants") filed a Motion to Strike Plaintiff's Amended Complaint and/or to dismiss whichever of the pleadings survives as the operative complaint. (Docket No. 24). On January 22, 2009, one of the newly named Defendants, Cologne Services Corporation (Cologne), moved to strike or, alternatively, dismiss the Amended Complaint. (Docket No. 29).

10. There are now five dispositive motions pending: two by Local 97, two by the Employer Defendants, and one by Defendant Cologne. This Court cannot determine which of Local 97's or the Employer motions must be considered until it has considered the motions to strike. Given the similarities in the motions by Defendants against the Complaint and the Amended Complaint, there is no burden in Plaintiff's being required to respond to the issues raised in both. In light of the age of the case, such a requirement is also in the interest of judicial economy.

IT IS HEREBY ORDERED, that Plaintiff shall file his response to all pending motions (Docket Nos. 14, 17, 23, 24, & 29) on or before March 2, 2009. Defendants' replies are due by March 25, 2009.

FURTHER, Plaintiff is warned that his failure to comply with this deadline may result in the motions being granted as unopposed, or the case being dismissed for failure to prosecute.

FURTHER, the Clerk of the Court is ordered to mail a copy of this Order addressed to Plaintiff at:

120 Meyer Rd. #603
Amherst, NY 14226

SO ORDERED.

Dated: February 9, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge